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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re VIOLET A., a Person Coming Under  
the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

MELISSA D.,

Defendant and Appellant.

D062297

(Super. Ct. No. SJ12658)

APPEAL from an order of the Superior Court of San Diego County, Garry G.

Haehnle, Judge. Affirmed.

Melissa D. appeals a juvenile court order, made at a six-month review hearing, terminating her reunification services as to her dependent child, Violet A. Melissa challenges the sufficiency of the evidence to support the court's finding she did not make substantive progress with the provisions of her case plan and there was no substantial

probability Violet would be returned to Melissa's custody in the next six months. Melissa also contends it was in Violet's best interests to order additional reunification services.

We affirm the order.

## FACTUAL AND PROCEDURAL BACKGROUND

Violet was born in 2010 to Melissa and Jimmy A. (together, the parents). The parents had a history of domestic violence. They separated in 2011, and shared physical custody of Violet. Violet came to the attention of the San Diego County Health and Human Services Agency (Agency) in July 2011 as a result of domestic violence between the parents. There was also an altercation between Jimmy and Melissa's new boyfriend, Robert P., which put Violet at risk of physical harm. An Agency social worker met with Melissa several times to discuss the need to keep Violet safe, and Melissa agreed to a safety plan. However, Melissa violated the plan on two occasions when she exposed Violet to violent confrontations with Robert. When Robert was arrested, Melissa signed another safety plan, agreeing to have no contact with him and to have supervised visits with Violet, who was staying with the maternal grandmother.

Following a team decision meeting with Agency, Melissa filed a temporary restraining order against Robert. Less than a month later, Melissa and Robert reconciled and were living together. Melissa was using marijuana. Consequently, Agency filed a petition in the juvenile court on behalf of Violet under Welfare and Institutions Code,

section 300, subdivision (b),<sup>1</sup> and detained her with the grandmother. Three days later, the police responded to another altercation between Melissa and Robert.

At the jurisdiction and disposition hearing in October 2011, the court declared Violet a dependent, removed her from parental custody, placed her with relatives and ordered reunification services for the parents. Melissa's case plan required her to participate in domestic violence treatment, develop a domestic violence safety plan, attend individual therapy, complete a parenting course, submit to random drug tests and participate in drug treatment and a 12-step program.

During the next six months, Melissa lived with the maternal great-grandparents, but maintained her relationship with Robert. Melissa participated in domestic violence treatment and made some progress. She left her inpatient drug treatment program after one day, stating she preferred to participate in outpatient treatment. All her drug tests were negative. Melissa delayed beginning individual therapy until February 2012. She was having regular weekly visits with Violet at the grandmother's home and another visit every week at her drug treatment facility.

On March 1, a violent altercation occurred involving Jimmy, Robert and Melissa. In response to Jimmy vandalizing Robert's car, Melissa, Robert and his brother chased Jimmy with their car. Melissa was driving, and positioned the car to prevent Jimmy from escaping. Robert's brother stabbed Jimmy twice, resulting in life-threatening injuries. At the same time, Melissa punched Jimmy's girlfriend in the face. Melissa was arrested for

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<sup>1</sup> Further statutory references are to the Welfare and Institutions Code unless otherwise specified.

attempted murder and assault with a deadly weapon causing great bodily injury. Jimmy required surgery to repair a collapsed lung and to stop the bleeding in his chest wall.

At the contested six-month review hearing in June 2012, the court received in evidence Agency's reports. The court took judicial notice of criminal court files showing Melissa had pleaded guilty to assault with a deadly weapon and was likely to receive probation conditioned on serving a year in custody with credit for time served. After considering the evidence, including the testimony of the social worker and Melissa, the court found returning Violet to parental custody would create a substantial risk of detriment to her. The court further found reasonable services were offered or provided to the parents, but Melissa had not made substantive progress with the provisions of her case plan and there was no substantial probability Violet would be returned to her care in the next six months. The court terminated reunification services for Melissa but continued services for Jimmy.

## DISCUSSION

Melissa challenges the sufficiency of the evidence to support the court's order terminating her reunification services. She asserts the evidence showed she actively participated in services, made substantive progress with the requirements of her case plan, and showed a substantial interest in reunifying with Violet. She further asserts additional services would not be futile despite the incident for which she was arrested and criminally charged.

A

Whenever a minor is removed from parental custody, the juvenile court ordinarily must "provide services to the parent for the purpose of facilitating reunification of the family." (*In re Luke L.* (1996) 44 Cal.App.4th 670, 678; *Tonya M. v. Superior Court* (2007) 42 Cal.4th 836, 843.) Where, as here, the child is under the age of three, "services are presumptively limited to six months." (*Tonya M.*, at p. 843; § 361.5, subd. (a)(1)(B).) Services may, if warranted, be extended up to 18 months. (§§ 361.5, subd. (a)(3), 366.21, subd. (g)(1).) Nevertheless, "there is no absolute right to receive the maximum amount of statutorily fixed services in any and all circumstances." (*In re Derrick S.* (2007) 156 Cal.App.4th 436, 445; *In re Aryanna C.* (2005) 132 Cal.App.4th 1234, 1242.)

"Before reunification [services] can be terminated, the agency must establish by a preponderance of evidence that it would be detrimental to return the child to the parent. (§§ 366.21, subd. (f), 366.22, subd. (a).)" (*Judith P. v. Superior Court* (2002) 102 Cal.App.4th 535, 546.) "The failure of the parent . . . to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall . . . consider the efforts or progress, or both, demonstrated by the parent . . . and the extent to which he or she availed herself to services provided . . . ." (§ 366.21, subd. (e).) If the court does not return the minor to parental custody at the six-month hearing, it may terminate reunification services when the parent has "made little or no progress in [his or her] service plan[] . . . and the prognosis for overcoming the problems leading to the

child's dependency is bleak." (*Daria D. v. Superior Court* (1998) 61 Cal.App.4th 606, 612.)

We review the court's order terminating reunification services for substantial evidence. (*Kevin R. v. Superior Court* (2010) 191 Cal.App.4th 676, 688; *In re James Q.* (2000) 81 Cal.App.4th 255, 261.) In this regard, we draw all reasonable inferences in favor of the court's findings, consider the record favorably to the court's order and affirm the order even if other evidence supports a contrary finding. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53.) The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the finding or order. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.)

## B

Here, the evidence showed Melissa participated in court-ordered treatment programs for several months. She drug tested with negative results, was active in a domestic violence treatment program and group counseling, and had recently begun individual therapy. Melissa was able to articulate some of the lessons she had learned and recognized that her relationships with men were unhealthy and endangered Violet. Despite having acquired this knowledge, Melissa continued her relationship with Robert and lied about it to her service providers. She took an active role in the life-threatening attack on Jimmy, assaulted his girlfriend, and left the scene knowing Jimmy had serious injuries. Even after pleading guilty to criminal charges, Melissa failed to accept responsibility for her actions, claiming she intended to prevent the incident from occurring. Melissa's violent behavior and lack of insight show she made no progress in

addressing the issues that placed Violet at risk and led to her dependency. (See *Jennifer A. v. Superior Court* (2004) 117 Cal.App.4th 1322, 1343 [purpose of reunification services is to overcome problems that led to child's removal in the first place]; *In re Dustin R.* (1997) 54 Cal.App.4th 1131, 1141-1142 [mere completion of certain technical requirements of reunification plan does not necessarily mean the parent has made progress toward eliminating the conditions leading to child's placement out of home].) Moreover, Melissa's failure to make progress while she participated in services inspires no confidence that she will effectively utilize additional services in order to resume the care and custody of Violet in the next six months. Substantial evidence supports the court's findings Melissa had not made substantive progress with the provisions of her case plan and there was no substantial probability Violet would be returned to her care in the next six months.

## II

Melissa contends the court abused its discretion by terminating her reunification services. She asserts it was in Violet's best interests to provide continued reunification services because family preservation was a paramount goal. She claims the proceedings were fundamentally unfair because the court continued Jimmy's services while terminating hers.

## A

When reunification efforts continue for one parent after a review hearing, the juvenile court may, but need not, offer reunification services to the other parent. (*In re Katelynn Y.* (2012) 209 Cal.App.4th 871, 881 (*Katelynn Y.*); *In re Jesse W.* (2007) 157

Cal.App.4th 49, 65-66; *In re Alanna A.* (2005) 135 Cal.App.4th 555, 566.) "The parent seeking additional services has the burden of showing such an order would serve the child's best interests." (*Katelynn Y.*, at p. 881.) In deciding whether to order additional services, the court evaluates whether the parent will utilize those services and whether services "would ultimately inure to the benefit of the minor." (*In re Jesse W.*, at p. 66.) We review that decision for abuse of discretion and will not disturb it unless the court has exceeded the limits of legal discretion by making an arbitrary, capricious or patently absurd determination. When two or more inferences reasonably can be deduced from the facts, we have no authority to reweigh the evidence or substitute our judgment for that of the juvenile court. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319; *Katelynn Y.*, at p. 881.)

## B

Here, the court continued Jimmy's services for six months, but found additional services for Melissa were not warranted because she had made no progress with the services she had received. As the court noted, Melissa continued to engage in domestic violence, both as a victim and a perpetrator, and had committed a violent crime. Although the primary purpose of limiting the period of reunification is to afford the child stability and permanence where reunification is unlikely within the statutory time limits, "[t]he Legislature has [also] recognized that in some circumstances, it may be fruitless to provide reunification services. [Citation.] In such a case, the general rule favoring reunification services is replaced by a legislative assumption that offering services would be an unwise use of governmental resources." (*In re Alanna A.*, *supra*, 135 Cal.App.4th



at p. 566.) Because Melissa made no progress toward alleviating or mitigating the causes of Violet's dependency, the court could properly find Melissa would not utilize further services, nor would those services ultimately inure to Violet's benefit. (*Katelynn Y.*, *supra*, 209 Cal.App.4th at p. 881.) There was no abuse of discretion or fundamental unfairness in the proceedings.

#### DISPOSITION

The order is affirmed.

O'ROURKE, J.

WE CONCUR:

NARES, Acting P.J.

AARON, J.